

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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| DEBORA MYERS, Plaintiff, vs. PILOT TRAVEL CENTERS, LLC, d/b/a FLYING J TRAVEL CENTER, Defendant. | CIV. #22- <u>4176</u> COMPLAINT AND DEMAND FOR TRIAL BY JURY |
|---|--|

COMES NOW the Plaintiff, Debora Myers, and for her Complaint against the above-named Defendant, states and alleges as follows:

PARTIES

1. Plaintiff Debora Myers (hereinafter "Plaintiff") is, and at all times relevant hereto was, a resident of Madrid, Iowa.

2. Upon information and belief, Defendant Pilot Travel Centers, LLC (hereinafter "Defendant") is a limited liability company duly organized and existing under the laws of the State of Delaware with its principal place of business in Knoxville, Tennessee. Defendant is duly registered to conduct and was, at all times relevant hereto, conducting business in the State of South Dakota in the gas station industry. At all times relevant hereto, Defendant was doing business as Flying J Travel Center located at 5201 N. Granite Lane, Sioux Falls, County of Minnehaha, South Dakota 57107.

JURISDICTION AND VENUE

3. Plaintiff invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1332 based upon the diversity of the Parties. The amount in controversy exceeds the sum of \$75,000.

4. A substantial part of the events giving rise to this action occurred in South Dakota, and thus venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

FACTS

5. On or about June 12, 2021, Plaintiff was a business invitee at the Flying J Travel Center located at 5201 N. Granite Lane, Sioux Falls, County of Minnehaha, South Dakota 57107.

6. On July 12, 2021, Plaintiff and her family were traveling through South Dakota on a family vacation and stopped at the Flying J Travel Center to refuel.

7. Plaintiff exited the vehicle while her husband was refueling the vehicle and started walking toward the gas station's entrance. She realized that she had forgotten her purse and turned around heading back toward her vehicle.

8. By this time, her husband had finished fueling their vehicle and pulled up to the Flying J Travel Center's entrance, parking in the second parking spot to the north of its main entrance.

9. Plaintiff walked toward the front passenger side of their parked vehicle. When she stepped off the curb onto the parking lot, her right foot hit the left side of the uneven/broken asphalt causing her foot to turn inward.

10. The uneven and broken asphalt caused the Plaintiff to fall to the ground and land on her left knee and twist her right ankle.

11. As a result of the fall, Plaintiff sustained injuries and damages, including, but not limited to, personal injuries which required medical treatment and ultimately surgery.

Additionally, she has experienced pain and suffering, permanent impairment and disability, scarring, loss of enjoyment of the capacity of life, loss of past and future earned wages, past and future medical costs and expenses, and other general and special damages.

COUNT I
Negligence – Premises Liability

12. Plaintiff realleges paragraphs 1-11 of this Complaint and incorporates them by reference herein.

13. Defendant owed a duty to exercise reasonable and ordinary care to Plaintiff and to maintain its premises in a reasonably safe condition.

14. Defendant breached its duties owed to Plaintiff.

15. Defendant's breach of its duties caused Plaintiff to sustain the above-discussed injuries.

16. Defendant owned and controlled the property on which Plaintiff was injured and knew or should have known of its dangerous condition and should have expected that Plaintiff would not discover, know, or realize the danger or would fail to protect herself against it.

17. Plaintiff's injuries were reasonably foreseeable to Defendant.

18. As a direct and proximate cause of Defendant's negligence, Plaintiff has sustained injuries including, but not limited to, personal injuries, pain and suffering, permanent impairment and disability, scarring, loss of enjoyment of the capacity of life, loss of past and future earned wages, past and future medical costs and expenses, and other general and special damages.

WHEREFORE, Plaintiff respectfully prays for damages against the Defendant as follows:

- (1) For Plaintiff's compensatory, general, and special damages in an amount the jury deems just and proper under the circumstances;
- (2) For Plaintiff's costs and disbursements herein;

- (3) For pre- and post-judgment interest; and
- (4) For such other and further relief as the Court determines to be just and proper.

Dated this 19th day of December, 2022.

**JOHNSON, JANKLOW, ABDALLAH, &
REITER, LLP**

BY 

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Fax: 605-338-4162

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully demands trial by jury on all issues so triable.



Scott A. Abdallah

Kimberly J. Lanham

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DEBORA MYERS

(b) County of Residence of First Listed Plaintiff Boone County, IA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Johnson, Janklow, Abdallah & Reiter, P.O. Box 2348
Sioux Falls, SD 57101 605-338-4304

DEFENDANTS

PILOT TRAVEL CENTER, LLC, et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|---|--|---|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habes Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC Sections 1332 and 1391(b)(2)

Brief description of cause:
Personal Injury involving a fall in private parking lot

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
greater than \$75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE _____

SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____